

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND DISSENTING IN PART**

Re: *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Rural Broadband Experiments*, WC Docket No. 14-259.

It has been a long road to get to this Order and Further Notice on the Connect America Fund (CAF) Phase II reverse auction and Remote Areas Fund (RAF). The item originally circulated in September would have put a thumb on the scale to fund a handful of fiber projects in lower-cost areas, a result that would have run counter to the goal of universal service. I was deeply troubled by this and outlined sound principles and proposals for the item. They are pretty simple: maximize coverage; eliminate artificial categories; be open to all technologies; use a multi-round auction; and prohibit overbuilding. I also continued my push for action on the RAF. Fortunately, as a result of further discussions with staff, my colleagues, and outside parties, the item has been revised in a positive direction. We are still a long way from home, but at least we are back on course for now. As a result, I am able to approve in part, while dissenting on certain problematic parts of the Further Notice that could derail this progress.

The revised version takes a number of steps to accommodate concerns raised by numerous parties. The minimum standards are now set to enable a wide range of providers to participate in the auction. In addition, the rigid categories have been replaced with more flexible tiers that accommodate a variety of technologies and offerings. For instance, there is now a tier that aligns with the performance requirements that price cap carriers that accepted model-based support must satisfy, which could be met using a mix of fiber, advanced DSL, and wireless technologies. Moreover, instead of a special fiber only round or a waterfall approach, all participants will now bid at the same time, ensuring the maximum possible competition in each round of the multi-round auction. In addition, the order now excludes areas that already have at least 10/1 service, targeting funds to areas that need it most, rather than wasting dollars overbuilding existing providers. All of these changes will have the effect of stretching USF dollars to cover more consumers.

That's not to say that I agree with every aspect of the tiers. I would not have included a Gigabit tier. Reasonable comparability is about ensuring that rural consumers receive service that does not lag too far behind what a substantial majority of consumers are subscribing to in urban areas. Adding a tier that is significantly above market reality provides a nice soundbite, but it is a distraction from the effort to connect the maximum number of people with the limited dollars available under our budget. And as I have said before, we should buy fewer Lamborghinis and more Chevys.

Setting the weights to preserve the balance between performance and cost-effectiveness will be critical. The Further Notice has the right objective. It aims to set the weights "to achieve our overarching goal of providing households in the relevant high-cost areas with access to high quality broadband services, while making the most efficient use of finite universal service funds."

I worry, however, that the Commission may ultimately adopt weights that disproportionately favor certain technologies and place too high a reward on premium offerings. There has been a lot of discussion about how to name the tiers, but the delta between them is far more important than what gets labeled the "baseline" as opposed to the "minimum". At the end of the day, if the weighting skews the results such that a few communities receive Gigabit service, but many more have no access at all, then the auction will have failed to deliver on the promise of universal service. I hope that we will receive a robust record on weighting to ensure good outcomes both for consumers who will receive service, as well as ratepayers who contribute fees each month to support the program.

I am also troubled that certain proposals in the Further Notice would be incompatible with an auction and could further undercut its effectiveness. I recognize the goal of ensuring that consumers in all states and Tribal lands are connected. However, the idea that the Commission would install the use of

quotas or set asides to favor certain consumers in certain areas is appalling. Such an approach is not consistent with the Commission's approach to the entirety of universal service.

To be clear, the Commission never provided any expectation that particular states would be guaranteed a certain amount of funding in this auction. Universal service is not an entitlement program for specific consumers or states. Instead, the Commission is supposed to design the program in an efficient manner that ensures that dollars flow to areas where they are most needed, consistent with the statute. As federal regulators, we have to take a broad view and focus on consumers nationwide. What matters is that we have a plan to serve as many Americans as possible, wherever they are located. States are then free to supplement the federal funding with state programs.

Moreover, the idea that certain states were somehow guaranteed the specific funding turned down by price cap carriers 1) is not accurate and 2) misses the point of holding a *reverse* auction. In fact, the amount of funding that was turned down represents the reserve price—the maximum amount we are willing to pay. We hope to pay far less in as many places as possible. Indeed, the purpose of a reverse auction is to use competition to incent providers to bid down the reserve so that we could free up dollars to connect additional consumers elsewhere. If the Commission ultimately adopts quotas or set asides, against my wishes, it will have the effect of bypassing lower bids in some states in order to fund costlier bids in other states. A nutty outcome indeed.

Instead, if there are parts of states or Tribal lands that are not claimed in this auction, it is because they are more likely than not RAF-appropriate places. They may be rural, difficult to access, far from existing providers, or otherwise extremely costly to serve. There may be permitting or other local barriers to investment and deployment. In fact, I have heard this concern raised when I have met with carriers trying to serve certain states, localities, or Tribal lands. These places should be included in the Remote Areas Fund rather than receiving special treatment now, which could skew the current auction in inefficient ways.

Importantly, the Commission is finally adopting a framework for the Remote Areas Fund, which should give all stakeholders some comfort that “winding up in the RAF” is not a dead end. For over two years, I have pressed the Commission to adopt rules to ensure that consumers in these areas will not be left behind, so I appreciate the steps taken in this order to solidify the structure of the RAF. I would have preferred to do even more, but I acknowledge staff's view that we may need to retain some flexibility to adjust the parameters to account for lessons learned in the current auction. Moreover, I appreciate staff's commitment to me to continue to work on the RAF in parallel with implementing the current auction, so that we will be in a position to commence the RAF auction within a year of the close of the current auction.

I would like to thank my colleagues and staff for working with me on this item. While the process leading up to today was far from ideal, I appreciate the collaborative effort to improve the item, which actually centered on the Eighth Floor pushing and pulling the item to get the best outcome for unserved consumers.